

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #13	CCRB Case #: 202003803	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 04/13/2020 11:41 PM	Location of Incident: § 87(2)(b)	Precinct: 83	18 Mo. SOL 10/13/2021	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 06/02/2020 2:31 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 06/02/2020 2:31 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. CPT Daniel Miraglia	00000	913785	ESU
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Jermaine Aspinall	4012	941368	083 PCT
2. POM Zachary Wienclaw	26413	965616	083 PCT
3. POM Michael Constantinou	09328	936381	083 PCT
4. POM Matthew Duffy	11168	967492	083 PCT
5. POM Christophe Ciaccio	19606	951612	ESS 08
6. POM Maciej Kotlowski	11397	943448	ESS 08
7. DTS Noah Molina	4247	930753	ESS 07
8. DTS Peter Connolly	06354	925109	ESS 07
9. POM Joshua Hechtman	21982	962466	083 PCT

Officer(s)	Allegation	Investigator Recommendation
A.CPT Daniel Miraglia	Abuse: Captain Daniel Miraglia entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.CPT Daniel Miraglia	Abuse: Captain Daniel Miraglia damaged § 87(2)(b)'s property.	§ 87(2)(b)
C. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)
D. An officer	Force: An officer used physical force against § 87(2)(b)	§ 87(2)(b)
E. Officers	Abuse: Officers forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)

Case Summary

On June 2, 2020, § 87(2)(b) called the CCRB and filed this complaint.

On April 13, 2020, at approximately 11:41 p.m., officers responded to § 87(2)(b)'s apartment at 66 Cooper Street, Apartment 2L in Brooklyn, following a 911 call from a neighbor. Officers from the Emergency Service Unit (ESU), acting under the authority of Captain Daniel Miraglia of ESU, entered § 87(2)(b) (**Allegation A: Abuse of Authority: § 87(2)(g)**), which resulted in damage to the front door of the apartment (**Allegation B: Abuse of Authority: § 87(2)(g)**). Officers used physical force against § 87(2)(b) (**Allegation C: Force: § 87(2)(g)**). An officer used physical force against § 87(2)(b) (**Allegation D: Abuse of Authority: § 87(2)(g)**). § 87(2)(b) was forcibly removed to the hospital (**Allegation E: Abuse of Authority: § 87(2)(g)**). No arrests or summonses resulted from this incident.

Body worn camera (BWC) videos of the incident were received from NYPD Legal. The footage is in IAs# 59-74 (**Board Review 01-16**) and IAs# 91-94 (**Board Review 17-20**), and summarized in IA# 103 (**Board Review 21**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Captain Daniel Miraglia entered 66 Cooper Street, Apartment 2L in Brooklyn.

Allegation (B) Abuse of Authority: Captain Daniel Miraglia damaged § 87(2)(b)'s property.

Allegation (E) Abuse of Authority: Officers forcibly removed § 87(2)(b) to the hospital.

§ 87(2)(b) testified that she was home alone and was awoken by the sound of loud banging at her front door (**Board Review 22**). She went to the door and asked the people banging what they were doing. A man responded, "Someone called to complain," which made her think there were officers trying to get into her apartment. She told the officers she would exit her apartment, however, the banging on her door persisted. § 87(2)(b) called 911 to report what was happening. Suddenly, her door was forcibly opened, and four officers entered her apartment. § 87(2)(b) was removed from her apartment and transported by ambulance to a hospital. § 87(2)(b) refused to identify the hospital or sign HIPAA medical release forms to the investigation. She said she was not diagnosed with anything and was discharged the following day.

Event documents revealed a 911 call from a male caller who reported that a female with a psychiatric history was acting violently, banging on the walls and doors, and yelling in the hallway of the building (**Board Review 23**). The caller did not provide his name during the call but identified himself as a resident of Apartment 3R on the third floor of the building, and he provided his phone number. The caller reported that the woman runs and locks herself inside when she hears sirens, and that she persists in her actions once officers leave. The 911 audio did not reveal any additional information, however the voice of the caller is the same as that of a male individual who officers encountered in the third floor hallway of the building upon their arrival (described in the next paragraph) (**Board Review 30**).

In BWC footage from PO Michael Constantinou of the 83rd Precinct, starting at the 02:45 minute mark on the media player timestamp (visible at the bottom of the screen), officers arrive at § 87(2)(b) and speak to a man who is waiting for them outside of his apartment on the § 87(2)(b) floor (**Board Review 01**). The man says the woman in Apartment § 87(2)(b) identified via investigation as § 87(2)(b) has a history of "psychological craziness" and having "crazy disputes," and that she was in the hallway banging on doors, screaming, and swearing. He says § 87(2)(b)'s partner was recently arrested for domestic abuse. The man reports that in an incident a few days prior, § 87(2)(b)'s partner was outside screaming and inside the apartment banging on doors.

In BWC footage from PO Joshua Hectman of the 83rd Precinct, PO Hectman is captured standing outside § 87(2)(b)'s apartment door (**Board Review 12**). Starting at the 03:55 minute mark on the media player timestamp (visible at the bottom of the screen), officers knock on the door and ask § 87(2)(b) to come outside and speak with them. Throughout the video, § 87(2)(b) makes numerous threats against the officers from behind her door and states that she is armed with a grenade. At 04:22, § 87(2)(b) says, "Bitch, your mother fucking ass is what's going on. I'm gonna kill you. Call the fucking cops on yourself. Fucking cops." At 06:20, § 87(2)(b) says, "'I'll kill all you motherfuckers out there.'" At 06:56, § 87(2)(b) says, "Now come in. I got a grenade in my hand." At 08:45, § 87(2)(b) says, "You motherfuckers got a death warrant." At 11:34, § 87(2)(b) says, "You wanna die?" At 24:40, § 87(2)(b) says, "Who the fuck are you. Where's your warrant? You don't come into my fucking house before I kill you. I'll kill you." "I will take your ass out myself." At 27:00, § 87(2)(b) says, "If you come in here, I'm gonna put a fucking grenade..." At 32:10, § 87(2)(b) says, "Get the fuck away from my door before I kill you." At 33:10, § 87(2)(b) says, "If you try to hit me up, I'm killing you and your family." At 37:58, § 87(2)(b) says, "I have a fucking grenade with your name on it." At 44:00, officers from the Emergency Service Unit (ESU) arrive, and they eventually gain entry into § 87(2)(b)'s apartment.

In BWC video from PO Maciej Kotlowski of the Emergency Service Unit (ESU), PO Kotlowski is captured standing outside § 87(2)(b)'s door with entry tools (**Board Review 20**). At the start of the video, PO Christopher Ciaccio, also of ESU, stands in front of the door and asks § 87(2)(b) to unlock the door and talk to him. At 00:55, PO Ciaccio warns § 87(2)(b) that he will have to break down the door if she does not unlock it. At 01:08, PO Ciaccio uses a tool to unhinge the peephole on the door. PO Ciaccio looks through the peephole and asks § 87(2)(b) to make herself visible. At 02:50, § 87(2)(b) says she is going to open the door. At 03:00, PO Ciaccio tries the handle and the door does not open. At 03:30, § 87(2)(b) says she is coming out. PO Ciaccio tells her to unlock the door and talk to him. At 04:20, § 87(2)(b) tells the officers that she should not be there and that she will not come talk to them. At 04:33, § 87(2)(b) says, "Get the fuck away from the door." Starting at 06:00, the officers start hitting the door handle. At 13:24, a tool is used to forcibly open the door and the officers enter the apartment.

Where officers have information from an identifiable witness and their own observations regarding an individual's violent conduct, threats, and disturbed mental condition, the emergency exception will justify a warrantless entry into an apartment. People v. Salazar, 290 A.D.2d 256 (2002) (**Board Review 24**). Officers may take a person into protective custody when they reasonably believe the person is mentally ill or emotionally disturbed and is conducting herself in a manner likely to result in a serious injury to himself or others. NYPD Patrol Guide, Procedure 221-13 (**Board Review 25**). Where officers are responding to an emergency situation and are denied entry to a protected premises, and are denied entry by the occupants, they will be justified in forcibly breaking down the door to gain entry. Wayne v. United States, 318 F.2d 205 (1962) (**Board Review 31**).

§ 87(2)(g)

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Allegation (C) Force: Officers used physical force against § 87(2)(b)

§ 87(2)(b) testified that each of the four officers who entered her apartment grabbed her by one of her limbs, lifted her body off of the floor, and carried her such that her body was perpendicular to the floor, out of her apartment, down the stairs, and out of the building. § 87(2)(b) could not describe more specifically how the officers made physical contact with her. Once outside, § 87(2)(b) was strapped to a stretcher by an EMT and was taken to the hospital. The only injuries § 87(2)(b) sustained were bruises to her chest and shoulders which she attributed to the straps used to restrain her to the stretcher.

The BWC footage from Det. Noah Molina of ESU captures Det. Molina and the other ESU officers entering the apartment (**Board Review 18**). At the 00:40 minute mark of the media player timestamp (visible at the bottom of the screen), PO Ciaccio and PO Kotlowski reach for § 87(2)(b)'s wrists and hands. § 87(2)(b) pulls away and says, "Why are they handcuffing me? Get the fuck off of me." § 87(2)(b) appears to lower herself to the floor. Officers handcuff her on the floor. At 02:24, they lift her up off the floor. At 03:00, Det. Molina and another officer hold onto § 87(2)(b) hands as she walks down the staircase and out of the building.

Force may be used when it is reasonable to ensure the safety of a member of the service or third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Any application or use of force must be reasonable under the circumstances. NYPD Patrol Guide, Procedure 221-01 (**Board Review 26**).

§ 87(2)(g)

Allegation (D) Abuse of Authority: An officer used physical force against § 87(2)(b)

§ 87(2)(b) did not allege any other uses of force against her aside from the force described above. However, at the 02:35 minute mark of Det. Molina's BWC video, officers are captured walking § 87(2)(b) out of her apartment (**Board Review 18**). At 02:42, § 87(2)(b) kicks an unidentified ESU officer in the groin area as she is being brought through the front door. The unidentified officer swings his right leg outward in § 87(2)(b)'s direction. It is unclear from the video whether he makes physical contact with her. The officer is wearing a large gas mask on his face. This aspect of the incident is also captured in the BWC video of Det. Peter Connolly, also of ESU, at the 02:28 minute mark (**Board Review 19**). The video does not capture whether the unidentified officer makes physical contact with § 87(2)(b) when he extends his leg.

The ESU report related to this incident notes that two ESU patrol units (corresponding to Det. Molina, Det. Connolly, PO Ciacchio, and PO Kotlowski) and an ESU supervisor (Captain Daniel

Miraglia of ESU) were the only ESU officers involved in this incident (**Board Review 32**). The event documents did not show any other ESU units responding to the incident (**Board Review 23**).

During his CCRB interview, Captain Miraglia, the ESU supervisor on scene during the incident, could not identify the officer captured in the BWC video who extends his leg toward § 87(2)(b) (**Board Review 33**). Captain Miraglia did not remember the incident during his CCRB interview and did not know if the officer kicked § 87(2)(b)

Police documents did not reveal any additional ESU officers involved in this incident. The BWC video depicts an officer whose face is completely covered by a large gas mask and does not show any identifying information on his uniform. Captain Miraglia, the highest ranking ESU member on scene, could not identify this officer during his CCRB interview. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the second complaint to which § 87(2)(b) is a party (**Board Review 27**).
 - § 87(2)(b)
- Captain Miraglia has been a member of the service for 30 years and has been a subject in six CCRB complaints involving 14 allegations, four of which were substantiated.
 - In case #200301995, The Board substantiated allegations regarding an entry, property damage related to the entry, and two discourtesy allegations against Captain Miraglia. The Board recommended Charges and the NYPD imposed no discipline.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- According to the NYC Office of the Comptroller, § 87(2)(b) has not filed a Notice of Claim regarding this incident (**Board Review 28**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 13

Investigator: Rolando Vasquez SI Rolando Vasquez 1/26/2022
Signature Print Title & Name Date

Squad Leader: Laura Kastner IM Laura Kastner 01/26/2022
Signature Print Title & Name Date